**IN THE SUPREME COURT OF INDIA**

**CIVIL ORIGINAL JURISDICTION**

**WRIT PETITION (CIVIL) DIARY NO. 10948 OF 2020**

**IN THE MATTER OF:**

NATIONAL ALLIANCE OF JOURNALISTS
& ORS. ...Petitioner

Versus

UNION OF INDIA & ORS. ...Respondents

PAPER- BOOK
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**COUNTER AFFIDAVIT ON BEHALF OF NEWS BROADCASTERS ASSOCIATION (RESPONDENT NO. 3)**

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**ADVOCATE-ON-RECORD FOR RESPONDENT NO. 3 :**
**P. S. SUDHEER**

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**COUNTER AFFIDAVIT ON BEHALF OF NEWS BROADCASTERS ASSOCIATION, RESPONDENT NO.3**

I, Annie Joseph daughter of late Mr P. T. George, aged about 65years, having its Registered office at FF-42, Omaxe Square, Commercial Centre, Jasola, New Delhi-110025 do hereby solemnly affirm and sincerely state as follows:-

1. That I am the authorized officer/ Secretary General of the Respondent Association and am fully conversant with the facts and circumstances of the

case and as such competent to swear this affidavit. Board Resolution dated 14.01.2020 is annexed as **ANNEXURE R-3/1 (Pages:** 29 **)**.

2. That I have gone through the copy of the Writ Petition filed by the Petitioners and having understood the contents thereof, I am filing the present Preliminary Objections.

3. That, at the outset, the Respondent No. 3 reserves liberty to file a detailed Counter-Affidavit to the present Writ Petition as and when called upon to do so by this Hon'ble Court.

**A. <u>PRELIMINARY OBJECTIONS</u>**

I. At the outset, it is submitted that the present Writ Petition purportedly filed under Article 32 of the Constitution of India is not maintainable in law as the same has been filed against private parties. [**Re: VST Industries Limited vs.VST Industries workers Union(2001 (1) SCC 298 ;Civil Appeal No.**

**2394 of 2019: Ramakrishna Mission &Anr. v. Kago Kunya &Ors.**]

II. It is submitted that a perusal of the Prayer in the present Writ Petition would show that the reliefs prayed for have been sought against the Respondent Nos. 2 and 3 [i.e. Indian Newspapers Society and News Broadcasters Association, respectively].The answering Respondent, the News Broadcasters Association (hereinafter referred to as "the NBA") represents the private television news & current affairs broadcasters. It is an organization funded entirely by its members. The NBA has several leading news and current affairs broadcasters as its members, all being private bodies. Hence a Writ under Article 32 of the Constitution of India for the enforcement of alleged fundamental rights against private bodies is not maintainable. The Union of India has been arrayed as a party with the sole mala-

fide motivation of bringing the present Petition within the ambit of a Writ Petition even though no direction has been sought against the Union of India.

III. It is submitted that the present Writ Petition is bereft of any substance and the same is based purely on news reports and the Petitioners have not made any enquiries regarding the veracity and authenticity of such news reports nor have the averred as to the efforts made by them to check the authenticity and veracity of such news reports. Thus, in the absence of any verification as to the authenticity of the allegations made in the present Writ Petition, the Writ Petition filed by the Petitioners is bereft of merit and ought to be dismissed by this Hon'ble Court. [**Re: B. Singh (Dr.) v. Union of India (2004) 3 SCC 363 and B.P. Singhal v. State of T.N. & Others (2004) 13 SCC 673**]

IV. It is submitted that the present Writ Petition has been filed seeking enforcement of alleged contractual

rights between the employers and the employees which are mainly governed under Indian Contract Act. One of the main grounds taken by the petitioner is that the impugned alleged actions of the Respondents are in violation of the terms of service and appointment letters/contracts of the journalists. This Hon'ble Court in **Ramesh Sanka v. Union of India &Ors. (2019) 3 SCC 589** and**K.K.Saksena vs International Commission on Irrigation and Drainage(2015) 3 SCC 670** has held that a Writ Petition under Article 32 is not maintainable for enforcement of personal contractual rights. Thus, the present Writ Petition deserves to be dismissed by this Hon'ble Court.

V. The main allegation for filing the writ is the alleged violation of the provisions of the Industrial Disputes Act, 1947.Without admitting any such allegations, it is submitted that the Petitioners herein have an alternate and efficacious remedy under the

Industrial Disputes Act, 1947 (ID Act) and, therefore, recourse to a Writ Petition under Article 32 of the Constitution of India is impermissible as held in a catena of Judgments of this Hon'ble Court. [**Re: The Premier Automobile Limited v. Kamlekar Shantaram Wadke of Bombay and Others (1976) 1 SCC 496, Rajasthan State Road Transport Corporation and Another v. Krishna Kant and Others (1995) 5 SCC 75, Chandrakant Tukaram Nikam and Others v. Municipal Corporation of Ahmedabad and Another (2002) 2 SCC 542 and Transport and Dock Workers Union and Others v. Mumbai Port Trust and Another (2011) 2 SCC 575**]

VI. Without prejudice to the above objections, it is submitted that the Writ is predicated on the alleged violation by the Respondents of the provisions of the Working Journalists and other Newspaper Employees (conditions of service) and Miscellaneous

Provisions Act, 1955. (Working Journalists Act). It is respectfully submitted that the Respondent No. 3 and its member Broadcasters are a part of the electronic media, which is not covered under the provisions of the Working Journalists Act. Hence, the question of the alleged breach of the provisions of the Working Journalists Act does not arise. The present writ is liable to be dismissed on this ground alone.

VII. That without prejudice to the above, I say that the present writ petition, which is being portrayed as a public interest litigation, is not maintainable, inter-alia, on the sole ground that the petition does not satisfy the essential ingredients of a public interest litigation. Nowhere in the entire petition has it been brought out that the issue raised and the relief prayed is in the interest of public. Rather, the petition is in self-interest of the petitioners and clearly the employment and economic interests of the members of the petitioners are involved. In this

behalf, it is pertinent to mention that all the petitioners, that is, National Alliance of Journalists, Delhi Union of Journalists, and Brihanmumbai Union of Journalists neither represent the Journalists of the Country nor have the locus standi to file this petition. The reliefs prayed for is that the services of the journalists (members of the petitioners) should not be terminated and their wages should not be reduced which is to safeguard the employment of the petitioners themselves and does not qualify to be a public interest litigation. Hence, it is not maintainable and is liable to be dismissed.

VIII. The present writ is based on allegations of non-compliance of Section 25- N or 25-O of the ID Act. It is submitted that Section 25N of the ID Act is not applicable to news broadcasters. Section 25N is a part of Chapter VB of the ID Act which applies only to a factory, mine or plantation (see section 25K read

with section 25L). Thus, this provision is clearly not applicable. Even otherwise the fact as to whether these sections are at all applicable is a disputed question of fact that can only be decided by way of evidence before the Industrial Tribunals created under the ID Act. The same cannot be raised by way of a Public Interest Litigation in a writ petition. Hence, the present writ is not maintainable and is liable to be dismissed on this ground alone.

IX. The relief to grant a blanket and omnibus order to suspend all employment laws cannot be granted and is not maintainable.That pursuant to the spread of the COVID19 and lockdown and other measures though some essential services (including print and media services) have been allowed to function, however the business of the entire industry including the Respondents, which was already under a deep financial constraint has been extremely severely affected. Besides causing unprecedented

havoc, it is an admitted fact that this crisis has caused an unprecedented economic turmoil worldwide including India. There have been no packages or measures announced for news broadcasters by the Government, even as their business has collapsed. This despite, news broadcasters continuing to provide responsible and credible real-time information every day to the country by keeping all operations open during this lengthy period. In fact, it is now the question of survival and help, for which aid and support is needed rather than such prohibitions as prayed for in this petition, which would economically destroy the industry. The reliefs prayed for are totally unreasonable, unjustified and are in fact against Article 19(1)(a) as it interferes with the freedom of press, and may even drive the press to the brink of insolvency in absence of corresponding revenues. Reasonable restrictions for taking any such actions

such as Retrenchment, change in conditions of service have already been provided under the Special legislations such as the Industrial DisputesAct,1947and alleged 'industrial disputes' cannot be raised by way of a Public Interest litigation. Hence, the present writ is not maintainable and is liable to be dismissed.

Therefore, in view of the Preliminary Objections to the maintainability of the present Writ Petition under Article 32 of the Constitution of India, this Hon'ble Court ought to dismiss the present Writ Petition filed by the Petitioners.

**PARA-WISE REPLY**

1. The contents of Paragraph 1 of the writ petition are false and hence denied. It is denied that the writ petition is public interest litigation. It is reiterated that the writ petition is filed in self-interest of the petitioners and pertains to employment issues under terms of appointment or special legislations such as

the Industrial Disputes Act, 1947, which provides effective forums and remedies for any alleged breach of its provisions. It is false and hence denied that there is any inhuman and illegal treatment being meted out by the Respondent No.3 to its employees as alleged or at all. As stated above, the Respondent No.3 is an association of the private television news & current affairs broadcasters. The various allegations made against the Respondent are wrong and hence denied. It is further submitted that it is settled law that a private employer is entitled under law to reorganise its business in the best interest of the organisation, especially in view of the spread of pandemic Covid 19 and the consequent unprecedented financial and other losses suffered by them. The advisory dated 20thMarch, 2020is in the nature of a request and issued as an advisory. It is neither law under Article 13(3) of the Constitution of India, and is in any case not binding on employers.

Further as far as Notification dated 29.03.2020 is concerned, without prejudice to the contention that it is not binding or legal, it is submitted that it is clear that the direction is with respect to payment of 'Wages' to the 'workers' at the 'workplace' by the Employers. It is not applicable to Journalists engaged by RespondentNo.3. The contents of the preliminary objections are reiterated and referred to.

1A. In reply to paragraph 1A of the writ petition, it is submitted that the only remedy for any alleged violation of the provisions of the Industrial Disputes Act,1947 is available to the petitioners before the Industrial Tribunals or Labour Courts under the said Act. The contents of the preliminary objections may be referred to.

2. The contents of paragraph 2 of the writ petition are wrong and denied. It is denied that there is any valid cause of action for filing the present writ petition. It

is false and hence denied that any alleged action by an employer in consonance with the applicable legislations has caused injury to the public or is an affront to the rights of journalists or impedes their ability to perform their duties. It is denied that any injury is caused to the public on account as alleged or at all. It is denied that the writ petition is for the welfare or benefit of the society. It is denied that the petitioners do not have any personal interest in the writ petition. The petitioners cannot pray for omnibus and blanket employment rights over and above as provided under the applicable Employment laws or the Contract. It is submitted that the Petitioners have personal interest in the subject matter herein. As is also evident from the averments in the petition as well as the prayer, the present petition only deals with employment issues which are duly covered by the ID Act and other Employment legislations which are comprehensive

codes providing the remedies therein. The contents of the preliminary objections are reiterated and referred to.

3. That I say that the contents of paragraphs No.3 to 5 as stated are denied for want of knowledge. Nothing has been placed on record by the petitioners to show the alleged registration of the unions, or the membership or the said persons allegedly being the office bearers of the alleged unions. In any case, a perusal of the contents of paragraphs under reply shows that the affected journalists and other employees through their alleged associations have sought to raise individual industrial disputes through this writ petition which is not maintainable and cannot be termed as public interest litigation. The contents of the preliminary objections are reiterated and referred to.

4. That I say that the contents of paragraphs 6 & 7 of the writ petition need no reply by the respondent no.3.

5. That I say that the contents of paragraph 8 of the writ petition are not denied.

6. In reply to the contents of Paragraph 9 & 10 of the writ petition it is submitted that the contents of the speech of the Prime Minister of India are matters of record. It is accordingly submitted that in order to face this unprecedented crisis the respondent would endeavour to organise their work or businesses in the best possible way within their capacity and keeping in mind the interests of all the stakeholders including the workers within the framework of the employment laws. However, the reliefs prayed for in the present petition are seeking a blanket stay against the rights of the Employers. Most of the businesses are already suffering indescribable

problems and financial losses and if such prohibitions are imposed even the survival of businesses would not be possible. Hence, the need of the hour is the assistance/support from the Central/State Governments and also the flexibility with the Employers to run their businesses as per their capacity, needs and requirements within the framework of the applicable employment laws. It is submitted that reasonable restrictions have already been imposed upon the employers under the I D Act. Any violation by an employer of the provisions of the ID Act can be challenged before the appropriate machinery under the ID Act. The petitioners are seeking to raise industrial disputes by way of this Public Interest litigation, which is impermissible.

7. The contents of Paragraphs 11to 14 of the writ petition are matters of record. The advisory dated 20.03.20, which has been mentioned in the writ has been issued by the Ministry of Labour and

Employment, Government of India where, in view of such a challenging situation, all the Employers of Public/Private Establishments have been advised to extend their coordination by not terminating their employees, particularly casual or contractual workers from job or reduce their wages. This advisory is merely a request. The Employers are at liberty to run their businesses as per their capacity, needs and requirements within the framework of the applicable employment laws. The contents of the preliminary objections are reiterated and referred to.

As far as Notification dated 29.03.2020, without prejudice to the contention that it is not binding or legal, it is submitted that it is clear that the direction is with respect to payment of 'Wages' to the 'workers' at the 'workplace' by the Employers. The said term 'worker' in the Notification dated 29th March, 2020 would apply to a 'worker' under the Payment of Wages Act, 1936. As per Section 1 (6) of the PW Act

it is applicable to an employee whose salary/wages does not exceed Rs.24000/- per month in view of NotificationNo.2806 (E) dated 26.08.2017 as notified by the Ministry of Labour and Employment. Hence only such workers who are covered under the PW Act would be covered under the said notification. It does not apply to journalists of the Respondent No. 3, who are neither covered under the WJ Act or the PW Act.

8. That I say that the contents of paragraph 15 of the writ petition are not denied. However, it is submitted that though electronic media has been allowed to function, it has suffered huge and unprecedented financial losses due to the spread of the Pandemic. The contents of the preliminary objections are reiterated and referred to.

9. The contents of Paragraph 16 of the writ petition is general, vague and without any specific details and is solely based on newspaper reports and is denied. It is

reiterated that in view of huge financial losses due to spread of the Covid 19 pandemic, the Employers as per settled law are at liberty to run/reorganise their businesses as per their capacity, needs and requirements within the framework of the applicable employment laws. Without prejudice to the above, it is submitted that any such alleged action is an 'industrial dispute' and can only be raised before the appropriate machinery under the ID Act and not by way of the present writ petition.

10. The contents of Paragraph 17 of the writ petition are denied for want of knowledge.

11. The contents of Paragraph 18 to 20 of the writ petition are vague and hence denied. The petitioners are alleging the violation of the provisions of the ID Act. Without admitting any such alleged violation, it is submitted that the only forum for challenging the same is before the appropriate machinery under the

ID Act and not by way of the present writ petition. The contents of para 16 are reiterated in this regard.

12. That I say that the contents of paragraph 19 of the writ petition as stated are wrong and denied for want of knowledge as News Nation Digital is not a member of Respondent No.3

13. That I say that the contents of paragraph 20 of the writ petition as stated are wrong and denied for want of knowledge as Quint is not a member of Respondent No.3.

14. That I say that the contents of paragraph 21 of the writ petition need no reply by the respondent no.3.

15. That I say that the contents of paragraph 22 of the writ petition as stated are wrong and denied for want of knowledge as Sakal is a print media publication and not a member of Respondent No.3.

16. That I say that the contents of paragraph 23 of the writ petition need no reply by the Respondent No.3.

17. The contents of Paragraphs 24 of the writ petition are denied for want of knowledge. In any event it is based on newspapers reports and cannot be the basis for a PIL.

18. The contents of Paragraph 25 of the writ petition are false and hence denied.

19. The contents of Paragraphs 26 to 28 pertain to Section 25-N, 25-O of the Industrial Disputes Act, 1947and Section 16A of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955. The petitioners are alleging the violation of the provisions of the ID Act. Without admitting any such alleged violation it is submitted that the only forum for challenging the same is before the appropriate machinery under the ID Act and not by way of the present writ petition. Further, it is reiterated that there are several disputed questions of facts involved in the present writ petition.

Further even the applicability of provisions of Section 25-N or 25-O of the Industrial Disputes Act 1947 can only be decided by way of evidence before the Industrial Tribunal/Labour Court and not by way of the present petition. Further section 16A of the Working Journalists Act is not applicable to Respondent No.3as itis not applicable to the electronic media.

20. The contents of Paragraph 29 are false and hence denied. It is denied that the members of Respondent No.3 are trying to achieve any objective which is either prohibited by law as alleged or at all.

**REPLY TO THE GROUNDS:**

21. That in reply to the contents of grounds A & B of the writ petition, it is submitted that huge financial losses have been suffered by virtually every industry in our nation and the world due to the spread of pandemic Covid 19. This has resulted in serious financial losses to the

electronic media industry also. Further there has been an immense stress on the news broadcasters on account of the COVID-19 pandemic. to ensure continuity of essential services such as the media, the news broadcasters have invested additional amounts to ensure connectivity and communication during the lock down and provide transport to all employees to ensure safety. These have come at a great cost to the news broadcasters, despite a complete lack of revenues. Since businesses are barely operational and consumer demand is at an all-time low, Advertisers are not interested in advertising during this pandemic period and advertisement volumes and revenues have drastically reduced since the advent of COVID- -19. Thus, the news broadcasters have been put under additional stress on account of increased costs to keep their work operational as it is an essential service, while there is a nose-dive in revenues on account of limited advertising. Hence the exemption from lockdown is no

ground for seeking prohibitions on the right of the Employer to take the necessary action within the framework of the applicable employment laws. The contents of the preliminary objections are reiterated and referred to.

22. The contents of Ground C to D are matters of record. It is submitted that the advisory dated 20.03.2020 issued by the central government is merely an advisory and hence not mandatory in nature. As far as Notification dated 29.03.2020, without prejudice to the contention that it is not binding or legal, it is submitted that it is clear that the direction is with respect to payment of 'Wages' to the 'workers' at the 'workplace' by the Employers. The contents of the preliminary objections are reiterated and referred to.

23. It is false and hence denied that the provisions of Section 25-O/25-Nof the ID Act are attracted in the present case. Further whether Sections 25-O/25-N of the ID Act or not

is a question of fact that can only be decided by way of evidence before the Industrial Tribunal created under the ID Act.

24. I say that the contents of ground G of the writ petition are wrong and denied. It is false and hence denied that the provisions of Section 16A of the Working Journalists Act, 1955 are attracted in the present case. It is denied that the provisions of Working Journalists Act are applicable to the Broadcasters/Electronic Media/Respondent No.3. A perusal of the provisions of Working Journalists Act would show that it is applicable only qua journalists and other non-journalist employees working in newspaper establishments. Hence Section 16A of the Working Journalists Act is not at all applicable to Broadcasters/Electronic Media/Respondent No.3, which covers the electronic media only. Without prejudice to the above a discharge in view of a force majeure situation brought about by the Covid-19 pandemic does not attract Section 16A of the Working

Journalists Act. The contents of the preliminary objections are reiterated and referred to.

25. The contents of Ground H are false and hence denied. It is denied that the termination of services, reduction in wages is in violation of the terms of service and appointment letters/contracts o fthe journalists. It is reiterated that a Writ Petition under Article 32 is not maintainable for enforcement of personal contractual rights.

26. That I say that the contents of Ground I are wrong and denied. Here, it is pertinent to reiterate that the Respondent No.3 themselves have suffered huge financial losses and their very survival is at stake.

27. That I say that the contents of Paragraph J of the ground are wrong and denied.

28. That in reply to the contents of Paragraph 31, I say that there is alternative efficacious remedy available to the petitioners by raising industrial disputes before the

Industrial Disputes Act,1947 and the present writ petition is not maintainable.

29. That I say that the contents of the prayer clause of the writ petition are wrong and denied. It is denied that any writ, direction or order is liable to be issued by this Hon'ble Court. It is denied that the petitioners are entitled to any relief from this Hon'ble Court.

30. That I say that the writ petition filed by the petitioners is not maintainable in view of the facts and circumstances of the case and the various preliminary submissions made hereinabove and is liable to be dismissed.

DocuSigned by:
Annie Joseph
06B38A080F314FB...
DEPONENT

**Verification**

Verified at _____ on this 11th day of May, 2020 that the contents of paragraphs of the above Affidavit are true and correct to my knowledge, no part of it is false and nothing material has been concealed therefrom.

DocuSigned by:
Annie Joseph
06B38A080F314FB...
DEPONENT

News Broadcasters Association
N B A
CIN : U22211DL2007NPL165480



**Extracts of the Board Resolution passed in the 78th Meeting of the Board of Directors of News Broadcasters Association (NBA) held on Tuesday, January 14, 2020 at 11.30 am in the Board Room of India TV, India TV Broadcast Centre, B-30, Sector 85, Noida 201 305**

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**Board Resolution authorizing Directors & Secretary General NBA to sign necessary documents, including legal, on behalf of NBA and/or NBSA:**

"**RESOLVED THAT** Mr. Rajat Sharma, Mrs. Anuradha Prasad Shukla, Mr. Avinash Pandey, Ms. Kalli Purie Bhandal, Mr. Sudhir Chaudhary, Directors and Mrs. Annie Joseph, Secretary General of the company (NBA) be and are hereby severally authorised for and on behalf of the NBA and /or News Broadcasting Standards Authority (NBSA), a duly constituted body of NBA in the Board Meeting dated 16.6.2008 to :

(a) move any court of law of competent jurisdiction to institute, prosecute, represent the company/NBSA, defend any legal proceedings for /against the company/NBSA or any of its officers or otherwise concerning the affairs of the Company/NBSA, to act on behalf of the company/NBSA in all matters relating to the business of the Company/NBSA in such courts;
(b) appear, represent, sign, verify, declare, affirm, make, present, submit, receive, revoke, inspect and file all necessary notices, plaints, petitions, replications, rejoinders, written statements, affidavits, undertakings, Vakalatnama, declarations, appeals, revisions, applications, statements, counter affidavits, complaints, papers and documents and other requisite documents whatsoever in all proceedings and matters in connection with any suit(s) or proceeding(s) filed by or against the Company/NBSA before any court of law, High Court(s), Supreme Court or any tribunal or any quasi-judicial or statutory or administrative authority;
(c) to file appeals, objections, depose, make statements and adduce evidences in any such case(s) before any court of law, High Court(s), Supreme Court or any tribunal or any quasi-judicial or statutory or administrative authority;
(d) nominate, appoint and engage advocates, solicitors, counsel or other professionals and retainers and to sign Vakalatnama for this purpose;
(e) to delegate to any subordinate, the power to collect all types of forms, documents, papers, etc. from the offices of Courts, High Court(s), Supreme Court or any tribunal or any quasi-judicial or statutory or administrative authority;
And generally, to do and execute all such acts, deeds or things as the aforesaid person(s) may think fit or necessary and/or incidental to the above purposes".

**RESOLVED FURTHER THAT** the aforesaid powers granted to aforesaid persons shall be valid and effective unless revoked earlier by the Board and shall be exercised by them only so long as they are in the employment of / associated with the Company/NBSA.

**RESOLVED FURTHER THAT** a copy of this Resolution duly certified by any of the Directors or Secretary General of the NBA be furnished to anyone concerned or interested in the matter."

**Certified True Copy**

**For News Broadcasters Association**

Director

Director
News Broadcasters Association
New Delhi

//TRUE COPY//

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